

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

FRANCES RENEE PERRY,
ADC #708998

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Petitioner,

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vs.

* No. 5:08cv0027 SWW/BD

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LARRY NORRIS, Director,
Arkansas Department of Correction,

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Respondent.

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ORDER

Before this Court is petitioner Frances Renee Perry's application for a certificate of appealability from the dismissal of her 28 U.S.C. § 2254 petition for habeas corpus [doc.#39]. This Court has the authority to issue such a certificate. *See, e.g., Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997), *cert. denied*, 119 S.Ct. 89 (1998); *Tiedeman v. Benson*, 122 F.3d 518, 522 (8th Cir. 1997). A certificate of appealability certifies that the applicant has made a substantial showing of the denial of a constitutional right, that is, a showing that the issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings. *See, e.g., Carson v. Director of the Iowa Dept. of Correctional Services*, 150 F.3d 973, 975 (8th Cir. 1998), *cert. denied*, 119 S.Ct. 819 (1999). With respect to claims that are procedurally barred, the Eighth Circuit has summarized the factors to consider when determining whether a certificate of appealability should issue when a habeas claim is denied on procedural grounds: "(1) if the claim is clearly procedurally defaulted, the certificate should not be issued; (2) even if the procedural default is not clear, if there is no merit to the substantive

constitutional claims, the certificate should not be issued; but, (3) if the procedural default is not clear and the substantive constitutional claims are debatable among jurists of reason, the certificate should be granted.” *Khaimov v. Crist*, 297 F.3d 783, 786 (8th Cir. 2002) (citing *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000)). After reviewing the record in this case, this Court determines that petitioner’s claims are clearly procedurally defaulted and that she in any case has failed to make the required showing of the denial of a constitutional right. Accordingly, to the extent petitioner’s notice of appeal is timely, her motion seeking a certificate of appealability should be and hereby is denied.¹

IT IS SO ORDERED this 26th day of August 2008.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE

¹ Judgment dismissing this action was entered on July 11, 2008. Petitioner’s notice of appeal is dated August 14, 2008 (and presumably the date it was mailed), and was filed with this Court on August 18, 2008.